IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.3967 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT QUARRY WORKS

Versus

STATE OF GUJARAT

Appearance:

MR PS PATEL for Petitioner No. 1

MR PREMAL JOSHI AGP for Respondent Nos.1-3

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 08/08/2002

ORAL JUDGEMENT

1. Mr.P.S.Patel, learned advocate for the petitioner and Mr.Premal Joshi, learned A.G.P. for the respondents are heard.

2. The petitioner is a partnership firm engaged in mining Black Trap and other stones from Quarry obtained on lease from the State Government. On 16-06-1994 the petitioner was granted Quarry Lease for 1 Hectare of land adjoining Survey Nos.879 and 883 in River Mahi, Village Timba, Taluka Godhra, Dist.Panchmahals.

3. Since 1998 when the Lease Deed was executed by the petitioner, the petitioner has been carrying on mining operations. It appears that on 05-05-2000, the Additional Director (Appeal and Flying Squad), Office of the Additional Director, Geology and Mining, Gandhinagar visited the site of the petitioner's Quarry and upon finding that the petitioner had encroached over Government land beyond the area which was leased out to the petitioner took measurements. It was found by the said authorities after such measurements that 5812 M.T. of minerals had been excavated from the land which was not leased out to the petitioner. Accordingly at the rate of Rs.90 per M.T. the amount of royalty was computed inclusive of interest @24%, and five cheques totalling to Rs.5,23,080/= were obtained. One Shri Sikanderbhai Vohra admitted that the petitioner - Firm had excavated the area which was falling beyond the area under lease. Thereafter an order dated 22-09-2000 came to be passed by Respondent No.2. Against the said order the petitioner preferred a revision application as provided in the Rules in the prescribed form on 09-11-2000. The said revision came to be decided by Respondent No.1 on 29-03-2001.

4. The petitioner has approached this Court seeking the following relief.

> "B) YOUR LORDSHIPS may be pleased to issue a writ of mandamus or any other appropriate writ, order or directions, directing the respondents to supply the copy of the order dated 22/09/2000 and further be pleased to quash and set aside the order dated 22/09/2000 passed by the respondent No.3 and order dated 29/03/2001 passed by the respondent No.1 at Annexure 'G' in the interest of justice. "

5. It was contended by Mr.Patel that the petitioner had not been supplied the order dated 22-09-2000 and the petitioner was constrained to file appeal as limitation was running out without the copy of the order against which the revision has been filed. It was further submitted that the inspection which was carried out by Respondent No.2 and his team of officials on 05-05-2000 was bad in law as the same was not preceded by any show-cause notice and was carried out without following

due procedure; that the petitioner had not been supplied with the copies of documents like statement of partner etc. It was further submitted that the cheques had been collected under coercion and immediately when the petitioner came to know that the entire inspection was bad in law, the petitioner had moved Respondent No.3 Collector, Panchmahals on 06-06-2000. That the Respondent No.1 - authority had failed to take the aforesaid aspect into consideration and hence the impugned order is liable to be quashed and set aside.

6. As against this Mr.Joshi, learned A.G.P. submitted that an absence of notice per se was not enough. That it was necessary for the Court to take into consideration the back-drop of the facts and circumstances in which the inspection had been carried out on 05-05-2000. That the authorities had acted in accordance with law and once the partner of the petitioner - Firm had admitted to the default, as recorded in his statement, the petitioner could not be heard at this length of time that due procedure had not been followed. That the statement of the partner was categorical in terms and the cheques had been issued voluntarily. In relation to the contention regarding non-service of the order it was submitted that the petitioner was not able to show that prejudice had been caused to it especially when the petitioner had taken appropriate remedial measure in law by way of filing the revision. It was further submitted that even before the revisional authority no grievance had been made to this effect i.e. the order dated 22-09-2000 had not been served on the petitioner. It was therefore submitted by Mr.Joshi that this was not a case wherein this Court should exercise its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

7. The principal grievance on behalf of the petitioner is that the respondents be directed to supply copy of the order dated 22-09-2000 passed by Respondent No.2. It is pertinent to note that the petitioner has raised this grievance for the first time before this Court and no such objection was raised in the revision filed before Respondent No.1 - authority. As can be seen from the grounds raised before the revisional authority it is nowhere stated that the revision was being filed in absence of the order dated 22-09-2000 and that the petitioner had not been served with the said order. Even in the prescribed form, as prescribed under the Rules the column which calls for the information regarding the designation of the authority against whose order the appeal or the revision is being filed, the petitioner has

very categorically stated that it is against the order dated 22-09-2000 passed by Respondent No.2 - authority. Similarly, in the forwarding letter dated 09-11-2000 the petitioner has specifically mentioned that the revision appeal is being filed against the said order dated 22-09-2000. There is no explanation available on record as to how did it come to the knowledge of the petitioner that the order had been passed on 22-09-2000. This assumes significance in light of the fact that the inspection had been carried out on 05-05-2000 and the order had been passed after more than four months from that date. It was contended on behalf of the petitioner that the respondents have not filed any reply disputing the averments made by the petitioner. Suffice it to state that it is for the petitioner to prima facie establish that the averments made in the petition are true and correct and there is nothing to support the said contention. To the contrary, the indication is otherwise when one looks at the prescribed form which has been filled up by the petitioner while filing the revision.

8. As regards the other contentions, it is apparent that the same involve disputed questions of fact : Whether the petitioner had voluntarily issued cheques or not, would have to be established by leading evidence. Similarly, whether the visit dated 05-05-2000 and the inspection on the said day had been carried out by following due procedure or not, would also involve leading of evidence. In these circumstances, it is not possible for this Court to interfere with the order dated 29-03-2001, nor is it possible for this Court to grant relief regarding direction to the authorities to supply the copy of the order dated 22-09-2000, as the petitioner has failed to prima facie establish that it was not in receipt of the aforesaid order.

9. The petition is, therefore, rejected for the foregoing reasons. Rule discharged. There shall be no order as to costs.

Sd/-

(D.A.Mehta, J)

'Bhavesh'